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09/449,237	11/24/1999	JAMES PRESCOTT CURRY	23091/9001	6035

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EXAMINER

EDELMAN, BRADLEY E

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 03/28/2002

13

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/449,237

Applicant(s)

CURRY, JAMES PRESCOTT

Examiner

Bradley Edelman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 81-97 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 81-97 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is in response to Applicant's Continued Prosecution Application and amendment filed on January 11, 2002. Claims 81-97 are presented for further examination. Claims 81-97 are all new claims.

#### ***Claim Objections***

1. Claim 86 objected to because of the following informalities:

In considering claim 86, the claim includes the following language: "wherein the assigning is done *by the method* . . . wherein at least one control group is provided *by the method*," (emphasis added). This language is objected to by Examiner. The language "by the method" and the phrase "wherein at least one control group is provided by the method" has already been stated in the claim, since the "method" encompasses the entire claim, and any step or limitation stated in the claim is necessarily part of the method being claimed. Therefore, the inclusion of the term "by the method" is superfluous and only adds an element of unnecessary confusion to the claim. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 81-84, 93, and 95 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In considering claim 81, the clause, "placing in communication at least one of a sponsored and non-sponsored portal to the online site through the publicly accessible distributed network accesses the on-line site through the Internet . . ." is worded in a way so as to make it unclear.

In considering claim 93, line 3 of the claim contains a grammatically incorrect phrase. It appears that the word "portal" is missing from the phrase, "network is coupled to a plurality of sponsored and the method comprising:".

In considering claim 95, the term "the control group" lacks sufficient antecedent basis.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 81, 93, and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al. (U.S. Patent No. 5,678,041, hereinafter "Baker").

In considering claim 81, as understood, Baker discloses a method of providing services through a publicly accessible distributed network (100) to authorized users using authorized portals (107-109), comprising:

providing an online site that enables databases to be accessed from at least one of multiple portals (col. 4, lines 18-35);

placing at least one of the multiple portals to the online site in communication with the on-line site through the publicly accessible distributed network (col. 4, lines 18-35), wherein at least one of the computer can access the site through the Internet (col. 3, lines 12-15);

sending a request from the online site requesting access to the databases (col. 4, lines 17-19);

processing the request to determine which portal the request came from (col. 4, lines 9-12, 17-19, "ID107, ID108, ID109," "identity of the requesting user terminal"), and whether the request was received from an authorized user (col. 4, lines 24-30, "user clearances 107-109"); and

responding to the request based on which portal the request came from and whether the request was received from an authorized user (col. 4, lines 17-30).

However, Baker does not expressly disclose using the online system at a fitness center, wherein one of the multiple computers is a computer residing at the fitness center and that is thus sponsored by the fitness center. Nonetheless, the claim limitations that the database is a wellness-related database, and that one of the computers may be at a fitness center, and thus would be sponsored by the fitness

center, are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. It would make no difference if one of the computers were at a health center, a neighbor's house, a library, a school, or any other location, or if the data was wellness-related, financial-related, or adult-material-related. The terminal ID determination and the authorization steps would be performed the same regardless of the type of information being accessed or the location of the requesting computer.

Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include any type of information and to place one of the terminals at any location in the system taught by Baker, because access to any type of personal or explicit information should be restricted to prevent tampering or unauthorized access. The subjective type of information and location does not functionally relate to the steps in the method claimed, and thus does not patentably distinguish the claimed invention.

Claim 93 contains no further limitations over claim 81, and is rejected for the same reasons as stated above.

In considering claim 94, Baker further discloses that different levels of services are available to the user based in part on the results of the determining step (col. 4,

lines 9-30). Although Baker does not disclose that Baker does not disclose that the sponsored portal is located in a health or fitness center, that claim limitation does not functionally relate to the steps in the method claimed, and thus does not patentably distinguish the claimed invention, as discussed above.

4. Claims 82-92 and 95-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker, in view of Szabo (U.S. Patent No. 5,954,640).

In considering claim 82, although the system taught by Baker discloses substantial features of the claimed invention, it fails to disclose obtaining data from the user through one of the portals, and then providing the user with access to the data through the other terminal. However, these features are well known for online sites, and particularly for wellness-related sites, as evidenced by Szabo. In a similar art, Szabo discloses a system for accessing an online wellness-related site, wherein users can enter information into the site to be stored at a database, and wherein the user can later retrieve that data from one of many computers (including a sponsored kiosk). See col. 6, lines 5-9; col. 3, lines 56-61. Thus, given the teaching of Szabo, a person having ordinary skill in the art would have readily recognized the desirability and advantages of allowing users to input data, as taught by Szabo, into the information access system taught by Baker, to allow greater interactivity among users, thus providing greater opportunity for market growth of the online site. Therefore, it would have been obvious to allow inputting data into the system, as taught by Szabo, in the system taught by

Baker. In addition, both Szabo and Baker teach that multiple computers can be used to retrieve data (see Baker, Fig. 1) and/or to input data (see Szabo, col. 4, lines 16-23).

In considering claim 83, Szabo further discloses assigning the user to a control group based on user attributes (col. 9, line 66 – col. 10, line 9).

In considering claim 84, Szabo further discloses providing fitness advice and goals to the group, wherein the advice and goals are at least in part a result of the group result data (col. 10, lines 1-34).

Claim 85 contains no further limitations over claims 81 and 82 combined and is rejected for the same reasons as stated above.

In considering claim 86, Baker discloses a method of providing services to an authorized user through a distributed communications network, comprising:

identifying a portal with a portal identifier (ID107, ID108, ID109), and storing the portal identifier in a database (col. 4, lines 20-22);

sending a request from the portal to an online site, and processing the request at a controller to determine whether the request was from the portal (col. 4, lines 1-16);  
and

assigning an access code to the user (clearance 107, clearance 108, clearance 109), the access code defining a level of services available to the user, and then

providing services to the user through the distributed network that correspond to the user's access code (col. 4, lines 25-32).

However, Baker fails to disclose the use of the access system for wellness-related information and services, and Baker further fails to disclose providing at least one control group, wherein each control group includes at least one authorized user, and assigning the user to one of the control groups, wherein the assigning is done based on user attributes. Nonetheless, the use of user authorization routines for wellness related sites is well known, as evidenced by Szabo. In a similar art, Szabo discloses a wellness-related site that provides wellness-related access and services to users, wherein the users must identify themselves before gaining access to the data (col. 13, lines 43-47, 55-57, "safeguards are also placed to prevent unauthorized intrusion into an individual's personal information records"). Thus, it would have been obvious to a person having ordinary skill in the art to use the safeguards taught by Baker for a wellness-related site, such as taught by Szabo, because users would not want others to know their personal medical and health information.

Szabo further discloses providing at least one control group, wherein each control group includes at least one authorized user, and assigning the user to one of the control groups, wherein the assigning is done based on user attributes (col. 9, line 66 – col. 10, line 9).

In considering claim 87, Szabo further discloses providing information or goods to the user based upon the control group to which the user has been assigned (col. 9, line 66 – col. 10, line 9).

In considering claims 88 and 95, Szabo further discloses creating practical guidelines and advice for the control group, including a user improvement plan selected to be related to the guidelines and advice (col. 10, lines 1-34).

In considering claim 89, Szabo further discloses that the improvement plan is at least in part based on the collective attributes of the control group (col. 10, lines 1-34).

In considering claims 90 and 96, Szabo further discloses that each control group includes group result data, the method further comprising providing the result data to the portal, storing the result data to the group result data for the authorized user's control group, and adjusting the user improvement plan for each user in the authorized user's control group based on the stored group result data (col. 10, lines 1-34).

In considering claim 91, Szabo further discloses checking if the user improvement plan for users in the control group needs to be adjusted (col. 12, lines 45-52). Thus, although an "alarm" is not expressly disclosed, Examiner takes official notice that alarms are notoriously well known in the computer art as a means for reminding or warning users of particular events. Therefore, it would have been obvious to a person

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having ordinary skill in the art to provide an alarm signal to the system administrator if adjustments are needed, to make a human aware of potentially harmful drug interactions or other health risks.

In considering claims 92 and 97, Szabo further discloses storing result data for the authorized user, and assigning the user to a new control group based on the stored result data for the user (col. 10, lines 14-34).

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

In particular, Applicant expressed a belief that Examiner may have misunderstood the meaning of a sponsored portal, because the specification describes one non-limiting example of the sponsored portal to be a computer kiosk sponsored by and located at a fitness center. Examiner has taken this comment into consideration. Note, however, that the claims must be read in light of the specification, but optional embodiments described in the specification cannot be read into the claims. Therefore, the use of a computer kiosk sponsored by and located at a fitness center has only been considered for the purposes of claims in which such language appears.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Edelman whose telephone number is (703) 306-3041. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5:00 PM.

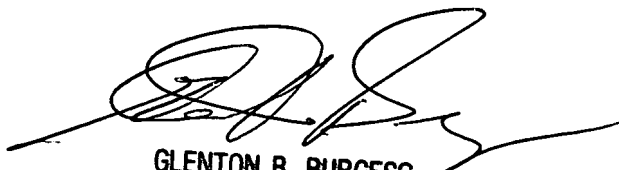
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (703) 305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

For all After Final papers: (703) 746-7238.

For all other correspondences: (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-3900.

BE  
March 18, 2002

  
GLENTON B. BURGESS  
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